firm, because the defendant firm was not carrying on business as South Asia Bar & Restaurant during the material period. There was no evidence in the present case that the plaintiff company's representative believed that Lall Singh was the agent of the defendant firm. There was no evidence, if he did entertain such a belief, that the defendant firm induced him to do so. The defendant firm, as between themselves and the plaintiff company, would accordingly not have been estopped from denying that Lall Singh was their agent.

For the above reasons I hold that the plaintiff company's claim fails and give judgment for the defendants with costs.

Claim dismissed.

Solicitors: *Sisson & Delay; Pillai & Co.*

MANIAM v. R. RAJOO

[A. Cr. J. (Smith J.) November 6, 1957]

[K. L. — Criminal Appeal No. 21 of 1957]

Penal Code, s. 498 — Enticing away a married woman — Hindu marriage — Proof.

For a charge of enticing away a married woman under section 498 of the Penal Code to succeed, marriage must be strictly proved. When any Hindu marriage is to be proved for the purposes of this section, it must be proved that the ceremonies were appropriate to the locality, family and caste of the parties concerned.

Cases referred to:—

(1) *Ramasamy v. Public Prosecutor* (1938) M.L.J. 137.

(2) *R. v. Ratnam* (1930) S.S.L.R. 218.

MAGISTRATE'S CRIMINAL APPEAL.

P. P. Nair for the appellant.

T. C. Tang for the respondent.

Smith J. : — The appellant was charged with and convicted upon the following charge :—

"That you on 10.10.53 at 3¾ mile, Ampang Road, Kuala Lumpur, enticed away one Janagi whom you knew or had reason to believe to be the wife of one R. Rajoo with intent that she might have illicit intercourse with some person and that you have thereby committed an offence under section 498 Penal Code."

The appeal must succeed on two grounds — first that there is not sufficient evidence that the woman Janagi was properly married to the man Rajoo, and secondly that there is upon the record no evidence that the appellant enticed the woman away from her reputed husband.

The marriage was proved by the statement of the husband that he had been properly married according to Hindu rites. He gave evidence that the marriage took place in a Hindu temple in Bungsar Road in the presence of a number of persons, including the bridegroom's father, that there was a priest present and the thali was tied. The bridegroom's father gave evidence in support and stated that he was satisfied that it was carried out according to Hindu rites. That was all the evidence which was given with regard to the marriage. The law relating to the proof of a Hindu marriage for the purposes of section 498 of the Penal Code has been fully discussed in the case of *Ramasamy v. Public Prosecutor*[1]. In that case Cussen J. cited with approval the following passage from the judgment in *R. v. Ratnam*[2]:—

"As to the ceremony eye-witnesses testified that all 'the usual Hindu Marriage rites were carried through by the priest of the Temple' but this Court has no judicial knowledge of what constitutes a valid Hindu marriage."

Again later in the same judgment Cussen J. cited with approval the following passage from *Trevelyan's* Hindu Law (3rd edition) at pages 45 and 64 on the subject of Hindu Marriage. At page 64 the author states :—

"Ceremonies vary according to local or family or caste usage."

In this case no evidence was given as to what was the caste of the parties to the marriage or what was the family or local usage, nor was any expert evidence of any kind called even though a priest was said to be present at the ceremony. In *Ramasamy's* case quoted above Cussen J. held that the evidence of the Pandaram who performed the marriage was sufficient for the purpose of proving that correct ceremonial had been used. There was, however, in this case no evidence to show that either the plaintiff Rajoo or his father were experts in Hindu law. I was not prepared to accept the respondent's argument that the customary law relating to Hindu marriage is so well known that there is no necessity that it should be proved by expert evidence. No authority was cited to me for this proposition and I consider, on the authority of *Trevelyan,* that when any Hindu marriage is to be proved before a Court for the purposes of section 498 of the Penal Code it must be proved that the ceremonies are appropriate to the locality, family and caste.

Turning to my second ground for allowing the appeal the plaintiff's evidence showed that in July 1953 he wished his alleged wife to leave her parents' home and make a separate home with him but she refused. At the end of July 1953 the complainant left his alleged wife who continued to live with her father. Six months after he had left her he heard that his alleged wife was misbehaving herself. Turning to the evidence of the alleged wife who was a witness for the complainant it appears that after the complainant had left her she came to know the appellant and went to live with him as his mistress. There is in

the evidence offered by the complainant no indication that the appellant had met the woman before she and her husband had parted nor is there any evidence that the appellant enticed the woman in any way whatsoever. Indeed the evidence in cross-examination suggests that it was she who sought him out and not he who sought her out. In her evidence she said :—

"I asked him whether I could stay with him. I don't remember what the first accused replied to my first request . . . . Now I can remember that the first accused objected to my first request. I pleaded with the first accused to take me for 2 or 3 days."

At the close of the complainant's case there was very clear evidence that the woman had seduced the appellant but absolutely no evidence of any kind whatsoever that the appellant had enticed the woman.

For the above reasons I allowed the appeal and ordered that if the sum of $150 being $100 costs and $50 compensation has been paid by the appellant to the complainant then that sum must be repaid by the complainant to the appellant.

Appeal allowed.

TEOH SIEW LEAN (f) & ANOR. v. PUBLIC PROSECUTOR.

[A. Cr. J. (Rigby J.) November 8, 1957]

[Penang — Criminal Appeal No. 38 of 1957]

Women and Girls Protection — Brothel — Keeping or maintaining premises — Solitary instance of user — No evidence of habitual or past user of premises for purpose of prostitution — Women and Girls Protection Ordinance (Cap. 33) s. 8(a).

Evidence — Agent provocateur — Use of police constable as.

Hotel — Distinction to be made between, and house used solely as a brothel — Proof.

In order to sustain a conviction for keeping or maintaining premises as a brothel contrary to the provisions of section 8(a) of the Women and Girls Protection Ordinance of the Straits Settlements, it must be proved that the premises were habitually used for the purpose of prostitution. A solitary instance of user by two or more women or girls is not sufficient.

In this case the convictions and sentences of the appellants were quashed and set aside on the ground that there was no satisfactory evidence as to habitual or past user of the premises for the purpose of prostitution. The learned Judge also criticised the Police for using Police Constables as agents provocateurs in order to procure and/or provide evidence against the hotel owners and/or management. It was also pointed out that a distinction must be made between a house or other place that is used simply and solely as a brothel and for no other avowed purpose, and premises which are ostensibly and genuinely used as a hotel or lodging house but which, or part of which, are used as a brothel. In the former case there is an absolute liability on any person who takes part in the assistance or management of such a place whereas in the latter case some degree of knowledge whether express or by imputation, that the premises were being used as a brothel must be proved against the person whom it is sought to charge.

Cases referred to :—

(1) *Brannan v. Peek* (1948) 1 K.B. 68, 72.
(2) *Michi & Anoyu v. R.* (1934) M.L.J. 11.
(3) *Tan Poh Whatt v. Public Prosecutor* (1940) M.L.J. 172.
(4) *Lee Siew Ean v. R.* (1956) M.L.J. 50.
(5) *Clarke v. Periam* 2 Atk. 337.

MAGISTRATE'S CRIMINAL APPEAL.

R. P. S. Rajasooria for the 1st appellant.

Lim Kean Siew for the 2nd appellant.

F. C. Cooke (Federal Counsel) for the respondent.

Rigby J. : — The 1st appellant in this case was charged with that she on the night of the 10th July, 1956, at about 9.40 p.m., at the Rex Hotel, Burmah Road, Penang, kept the said premises as a brothel, contrary to the provisions of section 8(a) of the Women and Girls Protection Ordinance (Cap. 33 of the Laws of the Straits Settlements).

The 2nd appellant was similarly charged under the same sub-section with assisting in the management of those premises as a brothel at the same time.

The appellants are mother and daughter respectively. The 1st appellant was the owner and licensee of the Hotel. She lived with her husband at Pulau Tikus, but there was evidence that she was daily at the Hotel and, indeed, according to the evidence of one of the prosecution witnesses, an employee in the Hotel, it was his duty to hand over to her the day's takings at midnight each night.

The 2nd appellant assisted in the Hotel and, according to the testimony of the 1st appellant, her mother, she was supposed to take charge of the Hotel when the 1st appellant was not herself on the premises. Indeed, the 1st appellant stated :—

"One of us would always be at the Hotel. One of us slept at the Hotel".

The facts established that on the night of the 10th July, 1956, three Malay Police Constables, acting on express instructions given to them earlier that evening, proceeded to the Rex Hotel. The instructions given to them were that each of them was to endeavour to pick up a girl — a prostitute — on the premises, pay for her services and take her into one of the Hotel bedrooms. According to the evidence of one of the Police Constables, he was actually instructed by Police Inspector Kanda Singh, the Officer who gave them these instruction, to have sexual intercourse ("main perempuan") with the girl he picked up. Each of them was provided with $10 to pay the girl.

Some time later that evening a Police party raided the Hotel. Each of the three Police Constables was